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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Parts 159 and 173**

**USCBP-2016 – 0065**

**RIN 1515 –AE16**

**CBP Dec. No. 16-25**

**Electronic Notice of Liquidation**

**AGENCY:** U.S. Customs and Border Protection; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations reflecting that official notice of liquidation, suspension of liquidation, and extension of liquidation will be posted electronically on the CBP website. The regulatory revisions reflect that official notice of liquidation will no longer be posted at the customhouses or stations and that official notices of suspension of liquidation and extension of liquidation will no longer be mailed. Additionally, this rule makes certain technical corrections to the CBP regulations to reflect statutory amendments.

**DATE:** This final rule is effective on January 14, 2017.

**FOR FURTHER INFORMATION CONTACT:** Virginia McPherson, ACE Business Office, Office of Trade, [virginia.h.mcpherson@cbp.dhs.gov](mailto:virginia.h.mcpherson@cbp.dhs.gov). Randy Mitchell, Trade Policy and Programs, Office of Trade, [randy.mitchell@cbp.dhs.gov](mailto:randy.mitchell@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1500), provides U.S. Customs and Border Protection (CBP) with the authority, under rules and regulations prescribed by the Secretary of the Treasury, to, among other things, give or transmit notice of liquidation pursuant to an electronic data interchange system. See 19 U.S.C. § 1500(e). Similarly, CBP is authorized to give notice of extension of liquidation in such form and manner (which may include electronic transmittal) as prescribed by regulation and notice of suspension of liquidation in such manner as considered appropriate. See 19 U.S.C. § 1504(b) and (c). Additionally, the National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), to provide for, among other things, the electronic status of liquidation. See 19 U.S.C. 1411.

Currently, notices of liquidation for formal entry, including notices of liquidation by operation of law, are physically posted in the customhouse or station at the port of entry on CBP Form 4333, and this physical posting is deemed the legal evidence of liquidation. When extension or suspension of liquidation occurs, official notices are mailed on an appropriately modified CBP Form 4333-A.

On October 14, 2016, CBP published a notice in the **Federal Register** (81 FR 71019) proposing to amend title 19 of the Code of Federal Regulations (“19 CFR”) to reflect that official

notice of liquidation, suspension of liquidation, and extension of liquidation would be posted electronically on the CBP website rather than being physically posted at the customhouses or stations or mailed. CBP also proposed eliminating the mailed paper courtesy notices of liquidation but stated its intention to continue sending electronic courtesy notices of liquidation, extension, and suspension via a CBP-authorized electronic data interchange system to the electronic filer when entries liquidate or are extended or suspended. The proposed amendments were intended to modernize, centralize, and facilitate the method by which importers are provided official notice of liquidation, extension, and suspension. Additionally, CBP proposed certain technical corrections to sections 159.11(a), 159.12(f), and 173.4a of 19 CFR to update the regulatory language to reflect statutory changes to sections 504 and 520 of the Tariff Act of 1930, as amended (19 U.S.C. §§ 1504 and 1520). The notice of proposed rulemaking requested public comments. The public comment period closed on November 14, 2016.

CBP received four comments regarding the proposed amendments to part 159 of 19 CFR regarding posting official notice of liquidation, suspension of liquidation, and extension of liquidation on the CBP website. No comments were received on the technical corrections to the regulations contained in sections 159.11(a), 159.12(f), and 173.4a of 19 CFR reflecting the statutory changes to 19 U.S.C. §§ 1504 and 1520.

### **Discussion of Comments**

Four comments were received in response to the notice of proposed rulemaking. CBP has addressed the comments below:

Comment: Three commenters expressed support for the proposed changes to post liquidation information on CBP's website, [www.cbp.gov](http://www.cbp.gov).

CBP Response: CBP appreciates the support and the input from the commenters.

Comment: One commenter suggested that the regulations state that the link will be visible on the CBP home page so that it remains conspicuous regardless of future CBP website changes and the public will not have to search for the link.

CBP Response: CBP agrees that the link needs to be conspicuous although not necessarily on the homepage. The link will be labelled “Official Notices of Liquidation” and, pursuant to 19 CFR § 159.9(b), it will be placed in a conspicuous place on CBP’s website in such a manner that it can readily be located and consulted by all interested persons. CBP assures that the link will remain conspicuous regardless of any potential future CBP website changes.

Comment: One commenter stated that the regulations should include a definition of what constitutes the posting and its data elements.

CBP Response: CBP disagrees that adding a definition of what constitutes the posting and its data elements is necessary because CBP believes such a definition would not add value or clarity. As proposed, the regulations at 19 CFR § 159.9 provide that the posting will occur on CBP’s website, address the date of posting, state that the electronic posting will be deemed the legal evidence of liquidation, and address liquidations by operation of law.

Comment: One commenter stated that the regulations appear not to deal with reliquidations and proposed adding reliquidation to 19 CFR § 159.9(b).

CBP Response: CBP disagrees with the commenter. CBP intends that the posting of reliquidations will also be done electronically. Section 173.3(b) regarding reliquidation (which is in the current regulations and was not proposed to be amended) provides that notice of reliquidation will be given in accordance with the requirements for giving notice of the original

liquidation. Accordingly, CBP believes there is no need to add reliquidation to 19 CFR § 159.9(b).

Comment: One commenter stated that the regulation should spell out in detail how the date of posting will appear.

CBP Response: CBP disagrees that the regulation needs to spell out in detail how the date of posting will appear as the posting will be in a format that is easy to understand. The date of posting will appear in standard MM/DD/YYYY format. For example, December 31, 2016, will appear as 12/31/2016.

Comment: One commenter asked if importers or brokers will be able to print the notice and asked if the printed notices would include the posting date.

CBP Response: A printed copy may be obtained using a web browser's print functionality which should include the information that is displayed on the screen, such as the posting date.

Comment: One commenter stated that the liquidation information posted on the CBP website should be searchable using data elements.

CBP Response: CBP agrees and has designed the liquidation information posted on the CBP website to be searchable using data elements.

Comment: One commenter stated that the large majority of liquidations take place on a Friday and asked if that practice will continue.

CBP Response: CBP has designed the functionality so that entries that are set for auto-liquidation, that is, liquidations that occur on the standard 314-day cycle without CBP intervention will continue to be made on Fridays. However, for manual liquidations where CBP

action is required, liquidations will generally post to the website within 90 minutes after CBP processes the liquidation.

Comment: Two commenters suggested that the 15-month timeline for maintaining liquidation information on the CBP website should be stated in the regulations.

CBP Response: CBP agrees that adding this language to the regulations will be beneficial. Accordingly, CBP has added language to §§ 159.9(c)(1), 159.12(b), and 159.12(c) stating that notices of liquidation, extension, and suspension, respectively, will be maintained on the CBP website for a minimum of 15 months.

Comment: One commenter requested that CBP place in the regulations the process for requesting access to notices that are no longer available on the website beyond the 15-month timeline.

CBP Response: CBP disagrees that this process needs to be included in the regulations. Guidance will be provided in the Automated Commercial Environment (ACE) Business Rules Process Document, which can be updated in a quicker manner than the regulations should a more efficient process for obtaining historical information be developed. When the information is no longer available on the CBP website, a request may be made to CBP for historical information by contacting the filer's assigned client representative or by contacting the appropriate port or Center of Excellence and Expertise directly. Additionally, ACE account holders may run queries to obtain the historical information without having to contact CBP.

Comment: One commenter stated that CBP has the ability to post notices regarding liquidations by operation of law immediately when they occur in the electronic environment rather than "within a reasonable period" after each liquidation by operation of law. Another

commenter asked that CBP post notice of liquidation by operation of law within 14 days of the liquidation.

CBP Response: CBP disagrees that it has the ability to post this information immediately upon occurrence because in many situations, CBP is unaware of the liquidation by operation of law for some time after it has occurred. However, the commenters validly pointed out that the electronic environment enables CBP to post notice without delay. Accordingly, based on these comments, CBP has amended the regulation at 19 CFR § 159.9(c)(2)(i) to state that CBP will post this information when it has determined that an entry has liquidated by operation of law, and has removed the phrase regarding posting within a reasonable time period.

Comment: One commenter asked if the term “filer” was the filer code or the name of the importer of record and noted that both the filer code and the importer of record should be included with the information posted on the CBP website.

CBP Response: The term “filer” is not referencing the filer code or importer of record number but is instead referring to the party transmitting entry/entry summary data to CBP. The filer code is a searchable data element and will be displayed in the search results. However, as stated in the notice of proposed rulemaking, when the results of a search are viewed, the CBP website will not display the importer of record numbers.

Comment: One commenter asked if people in one location may search the notices for another location and used the example of being in Miami and searching notices from Long Beach.

CBP Response: Because information will be posted on the CBP website, all notices of liquidation throughout the country will be available to view and search regardless of the physical location of the searcher.

Comment: One commenter asked that the liquidation information remain on the CBP website indefinitely until historical information is available to sureties through the ACE portal, so that the surety can generate search results easily for its own list of entries. This commenter also requested that “Surety Code” be added to the list of data elements.

CBP Response: As stated elsewhere in the document, the liquidation information will be maintained on the CBP website for a minimum of 15 months. Regarding sureties, CBP has provided for surety code to be a searchable data element.

Comment: One commenter asked that the surety on an entry be included in 19 CFR § 159.9(d) as a party to receive courtesy notices of liquidation.

CBP Response: A surety on an entry is able to receive courtesy notice if it is set up in ACE to receive courtesy notices of liquidation. However, based on this comment, CBP has amended the regulation at 19 CFR § 159.9(d) to state that courtesy notices of the extension will be sent to the entry filer or its agent and the surety on an entry.

Comment: One commenter asked that the filer and the surety be included as a recipient of courtesy notices of extension of liquidation in 19 CFR § 159.12(d)(2) in order to maintain consistency with 19 CFR § 159.12(b) and (c) regarding whom the regulations identify as parties receiving courtesy notices.

CBP Response: CBP agrees that the regulations should each be consistent in this regard. Accordingly, based on this comment, CBP has amended the regulation at 19 CFR § 159.12 (b), (c), and (d)(2), to state that courtesy notices of the extension will be sent to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange.

## Conclusion

Accordingly, after review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above, the proposed rule published in the **Federal Register** (81 FR 71019) on October 14, 2016. Specifically, the final rule contains the following changes based on the comments:

- Clarification in § 159.9(c)(1), which pertains to the date of liquidation, that notices of liquidation will be maintained on [www.cbp.gov](http://www.cbp.gov) for a minimum of 15 months.
- Clarification in § 159.9(c)(2)(i), which pertains to entries liquidated by operation of law, that notice of such will be posted when CBP determines that an entry has liquidated by operation of law.
- Clarification in § 159.9(c)(2)(ii) by making editorial changes for ease of reading.
- Clarification in § 159.9(d), which pertains to courtesy notice of liquidation, that CBP will endeavor to provide courtesy notice to the entry filer or its agent and the surety on an entry.
- Clarification in § 159.12(b), which pertains to notices of extension, that notices of extension will be maintained on [www.cbp.gov](http://www.cbp.gov) for a minimum of 15 months and that courtesy notice will be sent to the entry filer or its agent and the surety on an entry.
- Clarification in § 159.12(c), which pertains to notices of suspension, that notices of suspension will be maintained on [www.cbp.gov](http://www.cbp.gov) for a minimum of 15 months and that courtesy notice will be sent to the entry filer or its agent and the surety on an entry.

- Clarification in § 159.12(d)(2), which pertains to additional extensions at the importer's request, that courtesy notice will be sent to the entry filer or its agent and the surety on an entry.

## **Executive Orders 13563 and 12866**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

## **Regulatory Flexibility Act**

This section examines the impact of this rule on small entities per the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et. Seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The Regulatory Flexibility Act (5 U.S.C. 601 et. Seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that

qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

### Background

Most goods imported into the United States are subject to duty assessments, which CBP conducts during a process known as liquidation. During this liquidation process, CBP performs a final computation of duties (not including vessel repair duties) on the entry covering the imported merchandise and then closes out the entry. In accordance with current regulations, CBP officially notifies importers,<sup>1</sup> as well as the public, of a formal entry's liquidation by posting a weekly bulletin notice of liquidation in a readily-located and consulted place in the customhouse or station at each port of entry.<sup>2</sup> These notices are generally available for importers and the public to peruse for a few weeks before they are placed in CBP storage. CBP provides the same official notice of liquidation for informal entries where a duty cannot be determined at the time of entry and for reliquidated dutiable entries.<sup>3</sup> For other informal, mail, and baggage entries, CBP furnishes official notice of liquidation to an importer (and its surety when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery.<sup>4</sup> Once CBP provides official notice of liquidation or reliquidation,

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<sup>11</sup> For the purposes of this analysis, "importers" can also refer to agents, such as brokers, who act on behalf of importers.

<sup>2</sup> See 19 CFR 159.9(b).

<sup>3</sup> See 19 CFR 159.10.

<sup>4</sup> See 19 CFR 159.10.

importers generally have 180 days to file a protest challenging certain aspects of their entry's liquidation.<sup>5</sup> In addition to these official notices, CBP endeavors to provide importers (and their sureties) informal, courtesy notices of liquidation and reliquidation for entries scheduled to be liquidated or deemed liquidated by operation of law. For the majority of importers filing entries, who actually file electronically, CBP generally sends these filers (and their sureties) courtesy notices of liquidation and reliquidation via a CBP-authorized electronic data interchange system before the official notice (and protest period's start date). For the small portion of importers who file entries by paper, CBP typically mails paper courtesy notices of liquidation and reliquidation using CBP Form 4333-A to these filers on or around the date of the official notice's posting. These courtesy notices are not direct, formal, and decisive notices of liquidation or reliquidation; however, based on anecdotal evidence, most importers rely on these courtesy notices to determine liquidations and reliquidations to avoid the time and resource costs incurred to view official bulletin notices at U.S. customhouses or stations.

Some liquidations may be extended or suspended. If liquidation is extended or suspended, CBP officially notifies the importer and its surety by mail using CBP Form 4333-A, as appropriately modified.<sup>6</sup> CBP also provides importers who file entries electronically and their sureties with electronic courtesy notices of extension and suspension, which are generally sent in advance of mailed notifications. Although these courtesy notices are not direct, formal, and

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<sup>5</sup> For entries filed before December 18, 2004, the time limit is within 90 days after liquidation, but for entries filed on or after that date, it is now 180 days (see CFR part 174; see 19 USC 1514(c)(3) as amended by section 2103(2)(B), Pub. L. 108-429).

<sup>6</sup> See 19 CFR 159.12.

decisive notices of extension or suspension, CBP believes that most importers (and all sureties) rely on them to determine extensions and suspensions because importers receive them before the official notice and they contain the same information. Importers who file entries by paper do not receive electronic or paper courtesy notices of extension and suspension.

In an effort to modernize the liquidation, reliquidation, extension, and suspension notification processes, CBP, through this rulemaking, will discontinue physically posting official bulletin notices of liquidation and reliquidation at U.S. port of entry customhouses and stations. Instead, CBP will post these official notices in a readily-located, conspicuous place on the CBP website: [www.cbp.gov](http://www.cbp.gov). Additionally through this rule, CBP will begin posting electronically on [www.cbp.gov](http://www.cbp.gov) official notices of extension and suspension that are currently mailed. CBP will tie all electronic notices directly to an already-developed, automated process by which entries are liquidated, reliquidated, extended, or suspended, ensuring that these actions and CBP's official notifications of these actions occur almost simultaneously. This rule will not change the method in which CBP provides electronic courtesy notices of liquidation, reliquidation, extension, or suspension, but it will discontinue the practice of mailing any paper notices. For other informal, mail, and baggage entries, CBP will continue to furnish official notices of liquidation and reliquidation to importers (and their sureties when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery. As described next, these regulatory changes will introduce benefits and costs to importers, including small entities.

For most importers (and their sureties), this rule will simply change the way in which they can access official notices of liquidation, reliquidation, extension, and suspension. Instead of posting weekly official bulletin notices of liquidation and reliquidation at each U.S. customhouse and station and mailing official notices of extension and suspension, CBP will publish these notices on the CBP website once this rule is in effect. CBP will also discontinue mailing all paper courtesy notices of liquidation and reliquidation with this rule. Because the vast majority of importers (and all their sureties) already rely on the electronic courtesy notices of liquidation, reliquidation, extension, and suspension that CBP provides, this rule's transition to electronic official notice publications will presumably only affect a small portion of importers. Specifically, this transition to electronic notice publications will only affect those importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those importers who receive and rely on paper courtesy notifications of liquidation and reliquidation and paper official notices of extension and suspension due to their paper entry filings.

#### Number of Small Entities Affected by Rule

Using historical data, CBP estimates that importers took an average of 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices because the official bulletin notice's posting date was significant to a protest that importer planned to file.<sup>7</sup> CBP also estimates that CBP mailed an average of 23,500 paper courtesy notices of liquidation and reliquidation and 3,100 paper notices of extension and suspension each year to

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<sup>7</sup> Based on the 2,500 Applications for Further Review (AFRs) filed with protests in 2015. Importers or their attorneys who file AFRs depend on the exact dates of liquidation or reliquidation to file a timely protest, and thus likely travel to a U.S. customhouse or station to physically view official bulletin notices with the official dates of liquidation and reliquidation. Using the 2015 AFR filings as a proxy for trips taken to view official bulletin notices, CBP estimates that importers or their attorneys took 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices. Sources: 19 CFR 174.12(e) and email correspondence with CBP's Office of Trade on July 15, 2016.

importers who filed paper entries.<sup>8</sup> Considering this historical data, CBP estimates that this rule could affect up to approximately 29,100 importers per year. To the extent that the same importer took more than one trip to the U.S. customhouse or station to view an official bulletin notice or received and relied on more than one paper notice, the number of importers affected by this rule will be lower. Nonetheless, because the majority of importers are small businesses, CBP believes this rule will affect a substantial number of small entities.

#### Impacts of Rule on Small Entities

This rule's transition to fully electronic notices will require the estimated 29,100 importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those who rely on paper notices of liquidation, reliquidation, extension, and suspension to visit the CBP website to determine entry liquidations, reliquidations, extensions, and suspensions.<sup>9</sup> To view this rule's official bulletin notices on the CBP website, CBP assumes that these importers will spend an added 4 minutes (0.0667 hours)<sup>10</sup> navigating the CBP website

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<sup>8</sup> Based on data received through email correspondence with CBP's Office of Trade on May 26, 2016; June 22-24, 2016; August 29, 2016; and September 21, 2016.

<sup>9</sup> Importers could set up an Automated Commercial Environment (ACE) account to receive electronic courtesy notices of liquidation, reliquidation, extension, and suspension, but the time cost to do so is likely longer than the time it takes to view official notices on the CBP website. As such, CBP assumes that importers who receive and rely on paper notices of liquidation, reliquidation, extension, and suspension now will visit the CBP website for official notice rather than set up an ACE account to receive electronic courtesy notices once this rule is effective.

<sup>10</sup> The 4-minute added time burden represents the incremental change in the time burden over the current paper notification process. Source: Email correspondence with CBP's Office of Trade on April 26, 2016.

to find a liquidation, reliquidation, extension, or suspension notice, at a time cost of \$2.01 based on the assumed hourly wage rate for importers.<sup>11</sup> Most affected importers will presumably visit the CBP website once per year to view an entry's official notice of liquidation, reliquidation, extension, or suspension, for a total cost of \$2.01 per year.<sup>12</sup> However, some affected importers, such as those who receive extension and suspension notices that are in effect for an unknown amount of time, could visit the CBP website more than once per year for an entry, incurring the

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<sup>11</sup> The time cost estimate is equal to the assumed hourly wage for importers (\$30.09) multiplied by the hourly time burden for a trade member to navigate the CBP website to find a liquidation, reliquidation, extension, or suspension notice (0.0667 hours), and then rounded. CBP bases the \$30.09 hourly wage rate for importers on the Bureau of Labor Statistics' (BLS) 2015 median hourly wage rate for Cargo and Freight Agents (\$20.13), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2015 total compensation to wages and salaries for Office and Administrative Support occupations (1.4799), the assumed occupational group for importers, to account for non-salary employee benefits. CBP then adjusted this figure, which was in 2015 U.S. dollars, to 2016 U.S. dollars by applying a 1.0 percent annual growth rate to the figure, as recommended by the U.S. Department of Transportation's value of travel time guidance. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2015 National Occupational Employment and Wage Estimates, United States- Median Hourly Wage by Occupation Code: 43-5011." Updated March 30, 2016. Available at <http://www.bls.gov/oes/2015/may/oes435011.htm>. Accessed June 1, 2016.

The total compensation to wages and salaries ratio is equal to the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations (\$24.9475) divided by the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category (\$16.8575). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. *Employer Costs for Employee Compensation Historical Listing March 2004 – March 2016*, "Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2016 by Respondent Type: Office and administrative support occupations." June 9, 2016. Available at <http://www.bls.gov/ncs/ect/sp/ecceqrtn.pdf>. Accessed June 14, 2016.

Source of suggested growth rate: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update)*, "Table 4 (Revision 2-corrected): Recommended Hourly Values of Travel Time Savings." April 29, 2015. <http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf>. Accessed June 1, 2016.

<sup>12</sup> Importers will likely access the CBP website once a year to determine whether CBP has officially liquidated, reliquidated, extended, or suspended their entry. If CBP liquidates or reliquidates an entry, which will be the case for the importers who currently take 2,500 trips to U.S. customhouses or stations to view official bulletin notices and who receive 23,500 paper courtesy notices of liquidation and reliquidation annually, the importer will likely not have to access the CBP website again after the initial website visit to determine the entry's liquidation status. However, in a small number of cases, an importer may have to access the website more than once per year, over the course of more than one year to determine its entry's reliquidation status. If CBP extends or suspends an entry, which will be the case for the importers who receive 3,100 paper notices of extension and suspension annually, the importer may have to access the CBP website more than once per year, over the course of more than one year to determine the status of its entry's extension or suspension. However, considering the typical timeframes of extensions and suspensions, importers are most likely to access the CBP website only once per year for information on their entry's extension or suspension. Moreover, importers will likely receive information from CBP indicating whether CBP has reliquidated their entry or their extension or suspension has ended.

access cost of \$2.01 each time they visit the CBP website. Even if an importer accesses the CBP website twice a month for an entry, or 24 times per year, it will incur only a \$48.24 cost to do so. The average value per entry was \$69,300 in FY 2015.<sup>13</sup> The range of annual importer costs for this rule (\$2.01 to \$48.24) amounts to between 0.003 percent and 0.07 percent of this average entry value. Likewise, if an importer processes multiple entries per year, its total costs from this rule will be higher but the value of its entries will also be higher, meaning that the average cost to the importer will be between 0.003 percent and 0.07 percent of the entry value regardless of the number of entries the importer files per year. CBP does not consider this to be a significant economic impact.

Along with the minor website access cost imposed by this rule, this rule will provide benefits to importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations. This rule's electronic publication of official bulletin notices of liquidation and reliquidation will allow these importers to avoid visiting U.S. customhouses and stations for formal entry liquidation and reliquidation information, which typically occur 2,500 times a year. For each trip to a U.S. customhouse or station avoided, importers will save an estimated 45 minutes (0.75 hours), which will result in a time cost saving of \$22.57 using the average hourly wage for importers of \$30.09.<sup>14</sup> Importers will also save \$16.20 in travel costs per trip based on the estimated distance they sustain from traveling to and from a U.S. customhouse

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<sup>13</sup> Based on fiscal year 2015 U.S. entry and import value data. Source of entry data: U.S. Customs and Border Protection. *Summary of Performance and Financial Information Fiscal Year 2015*. May 2016. Available at <https://www.cbp.gov/sites/default/files/assets/documents/2016-May/summary-performance-financial-info-2015.pdf>. Accessed September 22, 2016. Source of import value data: U.S. Census Bureau. *FT920: U.S. Merchandise Trade Selected Highlights – October 2014 through September 2015 Releases*, “Exhibit 3: U.S. Imports - U.S. Customs District of Entry- Total General Customs Value by Month.” December 5, 2014-November 4, 2015. Available at [https://www.census.gov/foreign-trade/Press-Release/ft920\\_index.html](https://www.census.gov/foreign-trade/Press-Release/ft920_index.html). Accessed September 22, 2016.

<sup>14</sup> The time cost estimate is equal to the assumed hourly wage for importers (\$30.09) multiplied by the estimated hourly time burden for a trade member to travel to and from a U.S. customhouse or station (0.75 hours), and then rounded.

or station—30 miles—and the IRS’s \$0.54 standard mileage rate for business purposes.<sup>15</sup> To the extent that some trips are taken for multiple purposes, not just for viewing an official bulletin notice of liquidation or reliquidation, fewer costs will be avoided and the benefits of this rule per trip will be lower.

The electronic bulletin notices introduced with this rule will also provide benefits of eased access, relatively quicker notification, and extended viewing to importers. In particular, this electronic transition will allow importers to easily view and query a complete, consolidated list of U.S. entry liquidations, reliquidations, extensions, and suspensions, thus facilitating the process by which these individuals obtain such entry information. For importers who typically rely on paper courtesy notices for liquidation and reliquidation information, which they receive by mail after the official notice’s posting, this electronic posting will provide the added benefit of more timely notice and additional protest time. Importers who receive and rely on paper courtesy notices will also benefit from this rule’s consolidated electronic notice posting. This change will allow importers and their agents to view liquidation, reliquidation, extension, and suspension notices simultaneously instead of individually as they currently do through paper notices. Furthermore, importers will have at least 14 more months to view official liquidation, reliquidation, extension, and suspension notices before having to request access to the notices through CBP.

## Conclusion

Although CBP believes that this rule will affect a substantial number of small entities, specifically importers, CBP believes that the (negative) economic impact of this rule on small

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<sup>15</sup> Source of miles traveled: Based on estimates from CBP’s Office of Trade on May 2, 2016. Source of mileage rate: Internal Revenue Service. *2016 Standard Mileage Rates for Business, Medical and Moving Announced*. IR-2015-137, December 17, 2015. Available at <https://www.irs.gov/uac/Newsroom/2016-Standard-Mileage-Rates-for-Business-Medical-and-Moving-Announced>. Accessed April 19, 2016.

entities will not be significant. Accordingly, CBP certifies that this regulation will not have a significant economic impact on a substantial number of small entities. CBP received no public comments on the Electronic Notice of Liquidation Notice of Proposed Rulemaking challenging this certification.

### **Paperwork Reduction Act**

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

### **Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

### **List of Subjects**

#### **19 CFR Part 159**

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies

#### **19 CFR Part 173**

Administrative practice and procedure, Customs duties and inspection

## **Amendments to the CBP Regulations**

For the reasons given above, parts 159 and 173 of title 19 of the Code of Federal Regulations (19 CFR parts 159 and 173) are amended as set forth below:

### **PART 159 – LIQUIDATION OF DUTIES**

1. The general authority citation for part 159 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1500, 1504, 1624.

\* \* \* \* \*

2. Section 159.9 is revised to read as follows:

#### **§ 159.9 Notice of liquidation and date of liquidation for formal entries.**

(a) Notice of liquidation. Notice of liquidation of formal entries will be provided on CBP's public website, [www.cbp.gov](http://www.cbp.gov).

(b) Posting of notice. The notice of liquidation will be posted for the information of importers in a conspicuous place on [www.cbp.gov](http://www.cbp.gov) in such a manner that it can readily be located and consulted by all interested persons.

(c) Date of liquidation—(1) Generally. The notice of liquidation will be dated with the date it is posted electronically on [www.cbp.gov](http://www.cbp.gov) for the information of importers. This electronic posting will be deemed the legal evidence of liquidation. The notice of liquidation will be maintained on [www.cbp.gov](http://www.cbp.gov) for a minimum of 15 months from the date of posting.

(2) Exception: Entries liquidated by operation of law. (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in

§§ 159.11 and 159.12, will be deemed liquidated as of the date of expiration of the appropriate statutory period and will be posted on [www.cbp.gov](http://www.cbp.gov) when CBP determines that each entry has liquidated by operation of law and will be dated with the date of liquidation by operation of law.

(ii) For liquidation notices that were posted or lodged in the customhouse, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof was posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(iii) For liquidation notices posted on [www.cbp.gov](http://www.cbp.gov), pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date notice thereof is posted on [www.cbp.gov](http://www.cbp.gov), or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(d) Courtesy notice of liquidation. CBP will endeavor to provide the entry filer or its agent and the surety on an entry with a courtesy notice of liquidation for all electronically filed entries liquidated by CBP or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to a CBP authorized electronic data interchange system if the entry was filed electronically in accordance with part 143 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

**§ 159.10 [Amended]**

3. Section 159.10 is amended as follows:

a. By removing the words “posting or lodging of” from the last sentence in paragraph (b);

b. By removing the words “on CBP Form 4333 posted or lodged” from the last sentence of paragraph (c)(1); and

c. By removing the words “on a bulletin notice of liquidation, CBP Form 4333,” from the last sentence of paragraph (c)(3).

4. In § 159.11, paragraph (a) is revised to read as follows:

**§ 159.11 Entries liquidated by operation of law.**

(a) Time limit generally. Except as provided in § 159.12, an entry not liquidated within one year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer of record. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3) of this part. CBP will endeavor to provide a courtesy notice of liquidation in accordance with §159.9(d).

\* \* \* \* \*

5. In § 159.12, revise paragraphs (b), (c), (d)(2), and (f) and remove paragraph (g).

The revisions read as follows:

**§ 159.12 Extension of time for liquidation.**

\* \* \* \*

(b) Notice of extension. If the port director extends the time for liquidation, as provided in paragraph (a)(1) of this section, the official notice of extension and reasons therefor will be posted on [www.cbp.gov](http://www.cbp.gov). The notice of extension will be maintained on [www.cbp.gov](http://www.cbp.gov) for a minimum of 15 months from the date of posting. The port director will also endeavor to transmit a courtesy notice of extension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(c) Notice of suspension. If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the official notice of suspension will be posted on [www.cbp.gov](http://www.cbp.gov). The notice of suspension will be maintained on [www.cbp.gov](http://www.cbp.gov) for a minimum of 15 months from the date of posting. The port director will also endeavor to transmit a courtesy notice of suspension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(d) \* \* \*

(2) At importer's request. If the statutory period has been extended for one year at the importer's request, and the importer thereafter determines that additional time is necessary, it may request another extension in writing before the original extension expires, giving reasons for its request. If the port director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, the official notice of extension extending the time for liquidation for an additional period not to exceed one year will be posted on [www.cbp.gov](http://www.cbp.gov), and CBP will provide courtesy notice of the extension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

\* \* \* \* \*

(f) Time limitation. An entry not liquidated within four years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, unless liquidation continues to be suspended by statute or court order. CBP will endeavor to provide a courtesy notice of liquidation, in accordance with §159.9(d), in addition to the notice specified in §159.9(c)(2)(i).

## **PART 173 – ADMINISTRATIVE REVIEW IN GENERAL**

6. The general authority citation for part 173 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1501, 1520, 1624.

7. Revuse § 173.4a to read as follows:

### **§ 173.4a Refund of excess duties, fees, charges, or exaction paid prior to liquidation.**

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or

exactions have been deposited or paid, the port director may, prior to liquidation of an entry or reconciliation, take appropriate action to refund the deposit or payment of excess duties, fees, charges, or exactions.

R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

Approved: December 06, 2016

Timothy E. Skud  
Deputy Assistant Secretary of the Treasury

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